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August 11, 2021

VIA ECF

The Honorable Sean H. Lane
United States Bankruptcy Judge
One Bowling Green
New York 10004-1408

Re: In re Ninety-Five Madison Company, L.P.
Case No. 21-10529 (SHL)

Dear Judge Lane:

We represent Vitra, Inc. (“Vitra”), a creditor in the above-referenced chapter 11 case. On August 4, 2021, in response to the *Debtor’s Motion Pursuant to 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9019(a) for Entry of an Order Approving a Stipulation and Agreement of Compromise, Settlement, and Release* (Docket No. 50) (the “Motion”), we submitted a letter to the Court (Docket No. 56) raising concerns about the Debtor’s handling of tenant security deposits, including Vitra’s security deposit. The Debtor responded to our letter on August 6, 2021 (Docket No. 57), and supplemented its response on August 9, 2021 (Docket No. 58) (together, the “Debtor’s Response”).

As stated in our August 4 letter, the Debtor refused to confirm that the Vitra security deposit was held in trust as required by New York law. In addition, in January 2021, after Vitra garnished the Debtor’s account at Rhinebeck Bank as part of its efforts to levy on its judgment, Debtor’s counsel conceded that the Debtor commingled the security deposit with its funds when he advised Vitra’s counsel that the security deposit was part of the monies that had been garnished.

The Debtor’s Response appears to confirm that more than half of Vitra’s security deposit was converted by Rita Sklar, commingled, and then covered-up by an excuse furnished for the first time more than 8 months after the fact. In addition, the Debtor’s Response raises more questions than it answers, including:

- On June 19, 2020, Rita Sklar apparently converted \$166,626.90 of Vitra’s security deposit when she transferred that amount from the Debtor’s M&T Bank account to an account (non-trust) at Rhinebeck Bank. It appears that RAS Property Management LLC (“RAS”)

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(“RAS”) had or may have had an interest in the Debtor’s account at Rhinebeck Bank. According to a Domestic Outgoing Wire Transfer Authorization Form¹, attached hereto as **Exhibit 1**, the account ending in 8568 listed RAS as the owner of the account and shows RAS’s tax identification number (45-4588149). See **Exhibit 2** (excerpt from Debtor’s 2019 Form K-1 showing RAS’s tax identification number). The Debtor’s TIN is 13-3118512. See *id.*; Voluntary Chapter 11 Petition (Docket No. 1). This discrepancy has not been explained.

- The alleged purpose for transferring \$166,626.90 of Vitra’s security deposit to Rhinebeck Bank was:

. . . conditional payment of rent during the period of the governmental shutdown due to the COVID-19 pandemic in March-May 2020 which precluded construction work in the city. The Settlement Agreement at Paragraph Twenty-three provides that rent is not abated “to the extent Landlord is prevented from [installing dunnage] by force majeure” and the Lease at Article 31 provides that Landlord “may use, apply or retain the whole or any part of the security so deposited in the extent required for the payment of any rent or additional rent” without notice to Tenant.

See Docket No. 57, Exhibit A. That excuse is too contrived to be credible. First, there is no basis for the excuse that the government shutdown prevented the Debtor from installing dunnage. The Debtor failed to complete the installation for nearly four years before the shutdown and for 15 months since the shutdown ended. The shutdown is an apparent *post hoc* excuse for the Debtor’s and Rita Sklar’s conduct. Second, the Debtor failed to notify Vitra at the time that it had unilaterally declared the shutdown a *force majeure* event. The January 19, 2021 e-mail from the Debtor’s former counsel was the first – and only – notice given to Vitra regarding this significant decision. Third, the amount of Vitra’s security deposit the Debtor allegedly applied to rent was not based on the amount of rent due under the lease for the duration of the alleged *force majeure* event. Once again, suspension of the rent abatement due to a *force majeure* event is an apparent fabrication invented to excuse the Debtor’s and Rita Sklar’s conduct. Finally, the January 19, 2021 e-mail states that Article 31 of the lease permits the Debtor to apply the security deposit to rent without notice to Vitra. However, Article 31 of the lease expressly requires Vitra to replenish any portion of the security deposit applied to unpaid rent “within five (5) days after demand” is made

¹ Vitra obtained this form through discovery from Rhinebeck Bank in the pre-petition state court litigation after it was discovered that Rita Sklar was fraudulently transferring money from the Debtor’s accounts to prevent Vitra from levying it to satisfy its judgment.

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and therefore clearly requires that notice be given whenever the Debtor applies any portion of the security deposit to rent.

- While it may be the case that \$166,626.90 of Vitra's security deposit is in an interest bearing account at Rhinebeck Bank, it does not appear that the funds are held in escrow as required by New York law, and it appears the funds are held in an account in which RAS may have an interest.

Lastly, the Debtor's Response states that the Debtor complied with the discovery served by Vitra. However, the Debtor did not produce the documents attached as Exhibits B, C and D to its August 6, 2021 response and Exhibit B to its August 9, 2021 response – the very documents that Vitra requested and on which the Debtor now relies to argue there was no commingling, conversion or other inappropriate conduct.

We look forward to addressing these issues with the Court at tomorrow's hearing on the Motion.

Respectfully submitted,

S. Jason Teele

/enclosures

cc: Charles E. Simpson, Esq. (via e-mail and CM/ECF)
Richard C. Morrissey, Esq. (via e-mail and CM/ECF)
Adam H. Friedman, Esq. (via e-mail and CM/ECF)

EXHIBIT 1

Send Debi IMAD #

SSN/TIN: 13-3118512

Rhinebeck Bank



SSN/TIN: _____

Acct #: _____

Date: 9/22/20

PO Box 1191
Poughkeepsie, NY 12602
www.rhinebeckbank.com

845-454-8555 option 3
800-772-8760 toll free - out of area
845-790-1594 fax

Domestic Outgoing Wire Transfer Authorization

* Required Field

Date* 9/22/20

Time* 8:30 am

√ Transfer Amount* \$ 600,000.00

Type Domestic

√ Wire Fee Amount* \$ 24.00

√ Total* \$ 600,024.00

Originator Information

Name* Ninety-Five Madison Company L.P.

Phone* 212-532-8834

Street Address* 95 Madison Avenue, Suite 609

City* New York State* N.Y. Zip Code* 10016

Country* USA

Payment Method* ☒ Debit Account Account No. 7100033898

☒ Cash ☐ Other

Beneficiary Information for Domestic Wires (USD Only)

Beneficiary Bank Name* M&T BANK

9 Digit ABA No.* 022000046 ✓

Recipient* RAS PROPERTY MANAGEMENT

Street Address* 95 Madison Ave. Suite 609

City* New York State* NY Zip Code* 10016

Recipient Account No.* 9852318113

Purpose of Payment* TRANSFERRING FUNDS

Additional Payment Information
Invoice/Reference

Customer Acknowledgement

Please call me at home

The undersigned originator requests payments to be made to the beneficiary or account number named above. To the extent not prohibited by the law, the undersigned agrees that this wire transfer is irrevocable and that the sole obligation of Rhinebeck Bank is to exercise ordinary care in processing this wire transfer and that Rhinebeck Bank is not responsible for any losses or delays which occur as a result of any other party's involvement in processing this transfer.

Remitter's Signature* Bita A. S. Khan

Date* 9/22/20

Driver's License No.* [REDACTED]

State* _____ Exp. Date* 1/5/26 ✓

NYS PHOTO ID CARD

For Bank Use Only

Initiating Employee* [Signature]

Wire Control No.* 092220.006

Approving Employee* [Signature]

Fax Callback Employee* [Signature]

Time of Call* 11:25 am

Secondary Approval [Signature]

Ops Support Contact* [Signature]

Operations Support Department Only

Originated By [Signature]

Date 9-22-20 Time 11:58

OFAC Search: ☒ Yes ☐ No OFAC Results No

OFAC Review [Signature]

Verified By [Signature]

Date 9/22/20 Time 12:10

IMAD 20200922 0446FT009
000600



Outgoing Wire Tfr Form



101472



Rhinebeck Bank



PO Box 1191
Poughkeepsie, NY 12602
www.rhinebeckbank.com

845-454-8555 option 3
800-772-8760 toll free - out of area
845-790-1594 fax

Domestic Outgoing Wire Transfer Authorization

* Required Field

Date* 9/22/20 Time* 8:30 am
Type Domestic
✓ Transfer Amount* \$ 600,000.00
✓ Wire Fee Amount* \$ 24.00
✓ Total* \$ 600,024.00

Originator Information

Name* Ninety-Five Madison Company L.P. Phone* 212-532-8834
Street Address* 95 Madison Avenue, Suite 609
City* New York State* N.Y. Zip Code* 10016 Country* USA
Payment Method* ☒ Debit Account Account No. 7100033898 ☒ Cash ☐ Other

Beneficiary Information for Domestic Wires (USD Only)

Beneficiary Bank Name* M&T BANK 9 Digit ABA No.* 022000046 ✓
Recipient* RAS PROPERTY MANAGEMENT
Street Address* 95 Madison Ave. Suite 609 Recipient Account No.* 9852318113
City* New York State* N.Y. Zip Code* 10016
Purpose of Payment* TRANSFERRING FUNDS

Additional Payment Information
Invoice/Reference

Please call me at home

Customer Acknowledgement

The undersigned originator requests payments to be made to the beneficiary or account number named above. To the extent not prohibited by the law, the undersigned agrees that this wire transfer is irrevocable and that the sole obligation of Rhinebeck Bank is to exercise ordinary care in processing this wire transfer and that Rhinebeck Bank is not responsible for any losses or delays which occur as a result of any other party's involvement in processing this transfer.

Remitter's Signature* Rita A. Sklar ✓ Date* 9/22/20
Driver's License No.* [REDACTED] State* [REDACTED] Exp. Date* 1/5/26 ✓
NYS PHOTO ID CARD

For Bank Use Only

Initiating Employee* Ally Sta Wire Control No.* 092220.006 Approving Employee* A. Negro
Fax Callback Employee* Ally Sklar Time of Call* 11:25 am Secondary Approval* [Signature]
Ops Support Contact* Lauren R.

Operations Support Department Only

Originated By _____ Date _____ Time _____
OFAC Search ☐ Yes ☐ No OFAC Results _____ OFAC Review _____ IMAD _____
Verified By _____ Date _____ Time _____



Horizon - Rhinebeck Bank

MainQuick LaunchRecentLast MenuApplicationsOperationsControlsOptionsInquiry

Rhinebeck Bank

9/22/2011:56:17

Customer Portfolio

CurrentRM OFAC Indiv.

Portfolio Options

MainNotes InquiryTax InquiryUser Defined FieldsUser Defined Screens

Customer Information

Customer InquiryCustomer RelationshipsPrint Portfolio SnapshotCreate Customer NoteCreate Contact NoteRecommended ProductsConnections Indiv Profile

RAS Property Management LLC

95 Madison Ave

Suite 609

New York NY 10016

View Map

TIN45-4588149Hide

Phone212 532-8834Business

StatusActive

View Image

User NbrSHULSKY

Reg-OPrivacyNot Assigned

VIP

Comment Line

Notes

Account Information

Account ListAccount TotalsCollateral ListServices

BalancesDatesPayoff

Application	Account	Rel	Typ	Off	Brn	Balance	Avail Balance	Chrg-Off Balance	Status
Demand Dep	1110028568	OSG	41	097	001	166,786.76	166,786.76	.00	Opn
Demand Dep	7100033898	OSG	6	011	001	794,149.01	45,732.90	.00	Opn

InquiryImage PersonalizationAlt AddresseAccessTitleUser Defined FieldsInq in New TabSelectPrint Bal Rcpt

11:56:32

Current

RM OFAC Individ..

[ACH Inquiry](#) | [Display Dynamic Transfer Activity](#) | [Print Dynamic Transfer Activity](#)

Memo Credits Today	.00	Collected Balance	794,149.01	Last Stmt Balance	1,007,365.66
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Monetary Activity	Non-Monetary Activity	Package Post	Teller Memo
1. Cash			
2. Cash			
3. Cash			
4. Cash			
5. Cash			
6. Cash			
7. Cash			
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99. Cash			
100. Cash			

Date	Tel Id	Tran Code	Tran Code Desc	Check # Auth #	Tran Amount	Amount Affecting Available	Amount Affecting Running	Running Current Balance
9/22		5309	Wire Fee		24.00	24.00-	24.00-	777,946.56
Dsc		Wire Transfer Fee	-Outgoing Domestic	WC 092220.006	M & T Bank			
Src	ADJ	Subs	DDOFE	Batch 000001	Seq Nb 9999	Trace #		
User	B217DAS	Ovrd		Time 11:27:04	Sys 09/22/2020	Wrkstn	D17050097A	Branch 0000
9/22		5329	Wire Trfer		600,000.00	600,000.00-	600,000.00-	177,946.56
Dsc		Wire Transfer Debit-	Domestic	WC 092220.006	M & T Bank			
Src	ADJ	Subs	DDOFE	Batch 000001	Seq Nb 9999	Trace #		
User	B217DAS	Ovrd		Time 11:27:29	Sys 09/22/2020	Wrkstn	D17050097A	Branch 0000

Delete

Chargeback Inq

EXHIBIT 2

Schedule K-1

(Form 1065)

Department of the Treasury
Internal Revenue Service

2019

For calendar year 2019, or tax year

beginning / / 2019 ending / /

Partner's Share of Income, Deductions, Credits, etc.

▶ See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
13-3118512

B Partnership's name, address, city, state, and ZIP code

NINETY-FIVE MADISON COMPANY, L.P.
95 MADISON AVE.
NEW YORK, NY 10016

C IRS Center where partnership filed return ▶ E-FILE

D ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's SSN or TIN (Do not use TIN of a disregarded entity. See instructions.)
45-4588149

F Name, address, city, state, and ZIP code for partner entered in E. See instructions.

RAS PROPERTY MANAGEMENT, LLC
95 MADISON AVE
NEW YORK, NY 10016

G ☒ General partner or LLC member-manager ☐ Limited partner or other LLC memberH1 ☒ Domestic partner ☐ Foreign partnerH2 ☒ If the partner is a disregarded entity (DE), enter the partner's:

TIN [REDACTED] Name RITA A. SKLAR

I1 What type of entity is this partner? LLC

I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here ☐

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	63.4921 %	63.4921 %
Loss	63.4921 %	63.4921 %
Capital	63.4921 %	63.4921 %

Check if decrease is due to sale or exchange of partnership interest ☐

K Partner's share of liabilities:

	Beginning	Ending
Nonrecourse	\$	\$
Qualified nonrecourse financing	\$	\$
Recourse	\$ 617,115.	\$ 577,582.

☐ Check this box if Item K includes liability amounts from lower tier partnerships.

L Partner's Capital Account Analysis

Beginning capital account \$ 7,205,849.

Capital contributed during the year \$

Current year net income (loss) \$ -915,397.

Other increase (decrease) (attach explanation) \$

Withdrawals & distributions \$ (54,221.)

Ending capital account \$ 6,236,231.

M Did the partner contribute property with a built-in gain or loss?

☐ Yes ☒ No If "Yes," attach statement. See instructions.

N Partner's Share of Net Unrecognized Section 704(c) Gain or (Loss)

Beginning \$

Ending \$

☐ Final K-1☐ Amended K-1651119
OMB No. 1545-0123

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	15	Credits
	-16,756.		
2	Net rental real estate income (loss)		
*	-1,044,715.		
3	Other net rental income (loss)	16	Foreign transactions
4a	Guaranteed payments for services		
	26,391.		
4b	Guaranteed payments for capital		
4c	Total guaranteed payments		
	26,391.		
5	Interest income		
	147,061.		
6a	Ordinary dividends		
6b	Qualified dividends		
6c	Dividend equivalents	17	Alternative minimum tax (AMT) items
		A	-690.
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	18	Tax-exempt income and nondeductible expenses
9b	Collectibles (28%) gain (loss)	C	987.
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)		
11	Other income (loss)	19	Distributions
		A	54,221.
12	Section 179 deduction	20	Other information
		A	147,061.
13	Other deductions	Z*	STMT
14	Self-employment earnings (loss)		
A	9,635.		

21 ☐ More than one activity for at-risk purposes*22 ☐ More than one activity for passive activity purposes*

*See attached statement for additional information.

For IRS Use Only